

Art. 6243e.1. Firefighter's relief and retirement fund in cities of 450,000 to 500,000

Be It Enacted By The Legislature Of The State Of Texas:

Section 1. Chapter 183, Acts of the 64th Legislature, Regular Session, 1975 (Article 6243e.1, Vernon's Texas Civil Statutes), is amended to read as follows:

ARTICLE 1. GENERAL PROVISIONS

Sec. 1.01. **APPLICABILITY.** This Act applies only to a municipality having a population of more than 450,000 and less than 500,000.

Sec. 1.02. **DEFINITIONS.** In this Act:

(1) "Accumulated contributions" means all sums of money, including interest, in the individual account of a member or former firefighter, as shown on the books and records of the fund.

(2) "Actuarial equivalent" means a benefit that, at the time that it begins being paid, has the same present value as the benefit it replaces, based on the recommendations of the actuary.

(3) "Board of trustees" means the board of firefighters relief and retirement fund trustees of the fund existing pursuant to this Act.

(4) "Board's actuary" means the actuary employed under Section 12.03 of this Act.

(5) "Compensation" means a firefighter's monthly salary, excluding overtime pay, any temporary pay in higher classifications, educational incentive pay, assignment pay, Christmas Day bonus pay, and pay for automobile and clothing allowances.

(6) "Dependent child" or "dependent children" means a deceased member's unmarried children under the age of 22, other than a child who has been determined by the board of trustees not to have been dependent on the deceased member.

(7) "Fire department" means a regularly organized fire department of a city to which this Act applies.

(8) "Firefighter" means a commissioned civil service and Texas state-certified member of a fire department.

(9) "Fund" means the firefighters relief and retirement fund existing pursuant to this Act.

(10) "Internal revenue code" means the Internal Revenue Code of 1986.

(11) "Member" means any firefighter or retiree included in a fund under this Act.

(12) "Retiree" means a person who has retired under Article 5 or 6 of this Act and is receiving or is entitled to receive an annuity from the fund.

Sec. 1.03. **CONTINUED EXISTENCE.** A firefighters relief and retirement fund is continued in existence in each municipality to which this Act applies. The name of a fund shall be the name of the municipality, followed by the words "firefighters relief and retirement fund."

Sec. 1.04. **EXEMPTION FROM EXECUTION.** All retirement annuity payments, other benefit payments, and a member's accumulated contributions are unassignable and are exempt from execution, garnishment, attachment, and state and local taxation.

Sec. 1.05. **AGREEMENT MAY NOT SUPERSEDE THIS ACT.** Notwithstanding Section 143.307, Local Government Code, an agreement between a public employer and an association under Subchapter I, Chapter 143, Local Government Code, may not supersede or preempt any provision of

this Act and may not increase, diminish, or qualify any right, benefit, privilege, or obligation under this Act.

ARTICLE 2. ADMINISTRATION

Sec. 2.01. **RESPONSIBILITY.** Each fund established under this Act is a trust. The board of trustees is responsible for the administration of the fund.

Sec. 2.02. **COMPOSITION OF BOARD.** The board of trustees is composed of:

(1) the mayor of the municipality;

(2) the city treasurer or, if there is no treasurer, the person who by law, charter provision, or ordinance performs the duty of city treasurer; and

(3) three members of the fund to be selected by vote of the firefighters and retirees in the manner provided by this Act.

Sec. 2.03. **ELECTED MEMBERS OF BOARD.** (a) The elected members of the board of trustees shall be elected and hold office in accordance with this section.

(b) Between November 1 of each year and the first Monday in January of the following year, the board of trustees shall hold an election to elect one member of the board of trustees.

(c) Each election is by secret written ballot on a date the board of trustees determines. Only persons who have been nominated may be listed on the written ballot. Nominations may be made in person, by mail, or by telephone to the office of the fund and must be received between October 1 and October 15.

(d) The board of trustees shall certify the results of each election. A newly elected board member takes office at the first board meeting in January.

(e) The elected members of the board of trustees hold office for staggered terms of three years, with the term of one trustee expiring each year. Elected members of the board of trustees shall serve during the term for which they are elected and until their successors are elected and have qualified, unless a vacancy results because of death, resignation, or removal.

(f) A vacancy in the position of an elected member of the board of trustees shall be filled for the remainder of that person's term at an election to be held on a date selected by the board of trustees that must be within 60 days after the date of the event that caused the vacancy.

(g) The firefighter or retiree receiving the highest number of votes cast in an election under this section is elected, except that if no person receives a majority of the votes cast, a runoff election shall be held between the two persons receiving the highest number of votes. A runoff election is held on a date determined by the board of trustees, and the person receiving the highest number of votes in the runoff election is elected.

(h) The administrative expenses of an election under this section may be paid from the assets of the fund. Assets of the fund may not be used to pay campaign expenses incurred by or for a member. Administrative office supplies and equipment belonging to the fund may not be used to assist any candidate or person seeking to assist a candidate for a position on the board of trustees.

Sec. 2.04. **COMPENSATION.** A member of the board of trustees may not receive compensation for service on the board.

Sec. 2.05. **OFFICERS.** The mayor is the presiding officer and the city treasurer is the secretary-treasurer of the board of trustees. The board shall elect annually from its membership an alternate presiding officer who shall preside in the absence or disability of the mayor.

Sec. 2.06. **QUORUM AND VOTING.** Each member of the board of trustees is entitled to one vote. A majority vote of members of the board of trustees attending a meeting at which a quorum is present is necessary for a decision of the board. A resolution or order of the board of trustees must be made by a vote recorded in the minutes of its proceedings.

Sec. 2.07. **MEETINGS; MINUTES.** The board of trustees shall hold regularly monthly meetings at a time and place that is designates and may hold special meetings on the call of the presiding officer or alternate presiding officer. The board of trustees shall keep accurate minutes of its meetings and records of its proceedings.

Sec. 2.08. **ADMINISTRATION OF FUND.** The board of trustees shall:

(1) keep separate from all other municipal funds all money and other assets it receives for the benefit of the fund;

(2) keep a record of all claims, receipts, and disbursements and make disbursements only on vouchers signed by such persons as the board of trustees designates by resolution; and

(3) publish annually a report containing a balance sheet showing the financial and actuarial condition of the fund, a statement showing receipts and disbursements during the year covered by the report, and such additional matters as may be determined appropriate by the board of trustees.

Sec. 2.09. **DETERMINATION BY BOARD.** The board of trustees is authorized to hear and determine all matters regarding:

(1) eligibility of any person to participate in a fund under this Act;

(2) eligibility of any person to receive a service, disability, or survivor's benefit, and the amount of that benefit;
and

(3) whether a child or a parent of a deceased member was dependent on the member for financial support.

Sec. 2.10. **TESTIMONY.** The board of trustees may compel witnesses to attend and testify before it regarding all matters related to the fund in the same manner as is provided for taking of testimony before notaries public, and its presiding officer and alternate presiding officer have the authority to administer oaths to witnesses.

Sec. 2.11. **RULEMAKING.** The board of trustees shall adopt rules and perform reasonable activities it considers necessary or desirable for the efficient administration of the fund.

ARTICLE 3. MEMBERSHIP

Sec. 3.01. **GENERAL REQUIREMENT.** A person who begins service as a firefighter in a municipality to which this Act applies and who is not ineligible for membership in the fund becomes a member of the fund as a condition of that person's appointment.

Sec. 3.02. **APPOINTMENT TO CHIEF.** A firefighter who is a member of the fund continues to be a member if the firefighter is appointed to the rank of chief or the rank immediately below chief.

Sec. 3.03. **TERMINATION OF MEMBERSHIP.** A person ceases to be a member of the fund on the earlier of the date of:

(1) death; or

- (2) refund or escheat of the person's contributions while absent from service.

ARTICLE 4. SERVICE CREDIT

Sec. 4.01. **GENERAL PROVISION.** One month of service credit is earned in the fund for each month in which a member of the fund makes a contribution required under this Act.

Sec. 4.02. **MILITARY SERVICE.** A member of the fund retains all accumulated service credit and is allowed service credit for each month during which the member leaves employment with the fire department and performs active duty service in the armed forces or the armed forces reserves of the United States or their auxiliaries, except that:

- (1) the military service credit may not be for more than five years and the person must return to service with the fire department not later than the 180th day after the date of discharge or release from military service or from hospitalization continuing after discharge for a period of not more than one year;

- (2) the member must leave the member's contributions in the fund during the period of absence; and

- (3) the member must file a written application with the fund for the military service credit, accompanied by satisfactory proof of the member's military service.

Sec. 4.03. **FORMER SERVICE.** A member of the fund who is absent from service with the fire department for reasons other than military service retains all accumulated service credit for the member's former service with the fire department, but receives no credit for the period of absence, if:

- (1) the length of the absence is less than five years; and

- (2) the member leaves the member's contributions in the fund during the absence.

Sec. 4.04. **OTHER ABSENCE.** If a member of the fund who has less than 10 years of service credit in the fund is absent from service with the fire department for at least five years for any reason other than as provided by Section 4.02 of this Act, the fund shall refund the member's accumulated contributions and cancel the person's credit service.

Sec. 4.05. **PERIODS OF DISABILITY.** A firefighter may not be granted service credit for time during which the person receives a disability benefit from the fund.

ARTICLE 5. SERVICE RETIREMENT BENEFITS

Sec. 5.01. **NORMAL SERVICE RETIREMENT ELIGIBILITY.** A member is eligible to retire and receive a normal service retirement annuity if the member:

- (1) has attained the age of 50 years and has a least 10 years of service credit in the fund; or

- (2) has at least 25 years of service credit, regardless of age.

Sec. 5.02. **CONTINUED SERVICE.** A member who continues to serve actively in the fire department after the date the member becomes eligible to retire shall continue to make contributions to the fund and accrue service credit until the date of actual retirement.

Sec. 5.03. **DETERMINATION OF AVERAGE MONTHLY SALARY.** A member's average monthly salary is computed as the average of the member's compensation for the 36 months of highest compensation during the member's credited service. If a person has less than 36 months of credited service, the average monthly salary is computed, as if the member had been employed by the fire department for 36 months, by attributing to a period that is immediately before the member's employment and that is equal to the difference between the number of months the member has been employed by the fire department and 36 months of compensation the member would have received at the rank the member held when the person became a member.

Sec. 5.04. **NORMAL SERVICE RETIREMENT BENEFIT.** (a) The service retirement annuity of a person who retires under Section 5.01 of this Act on or after January 1, 1995, is a monthly payment that is equal to three percent of the member's average monthly compensation multiplied by the member's number of years of service credit and any fraction of a year of service credit.

(b) The three percent factor used in this section may be changed to some other percent if the change:

- (1) is first approved by the board's actuary;
- (2) is approved by the board of trustees;

(3) applies only to firefighters who are employed on an active, full-time basis in the fire department at the time of the change, to those firefighters who begin service with the fire department after the change becomes effective, and to those members who retire pursuant to the provisions of Section 5.06 of this Act after the date of the change; and

(4) does not reduce a member's benefit for service credit accumulated before the date of the change.

(c) The service retirement annuity of a person who retired before January 1, 1995, is a monthly payment based on the benefit formula in effect at the time of the person's retirement, together with any increases for retirees approved by the board of trustees after the person's retirement.

Sec. 5.05. **EARLY RETIREMENT.** (a) A member is eligible to retire and receive a normal service retirement annuity if the member, while serving as a firefighter with the fire department:

- (1) attained the age of 45 years and had at least 10 years of service credit in the fund; or
- (2) had at least 20 years of service credit, regardless of age.

(b) The retirement annuity of a person who retires under this section after September 1, 1997 is the same as for a normal service retirement, but cannot be increased under Section 9.04 until the person would have met the requirements of Section 5.01 of this Act if the person had remained in active service as a firefighter.

Sec. 5.06. **ELIGIBILITY AFTER 10 YEARS OF SERVICE.** (a) A member may terminate employment with the fire department and later retire and receive a service retirement benefit if, at the time of the member's retirement:

(1) the member has accumulated at least 10 years of service credit in the fund and made required contributions to the fund for at least 10 years;

(2) the member does not withdraw the member's contributions from the fund at the time of or after the termination of employment; and

(3) the member has either attained 50 years of age or would have accumulated at least 25 years of service credit if the member had not terminated employment with the fire department.

(b) The retirement benefit payable to a member on retirement under this section is the service retirement benefit described by Section 5.04 of this Act, computed on the basis of the formula in effect at the time of the member's retirement under this Act.

Sec. 5.07. **WITHDRAWAL OF CONTRIBUTIONS.** A person who has terminated employment with the fire department and left the person's contributions with the fund under Section 5.06 of this Act may at any time apply for and receive the person's accumulated contributions under Section 9.06 of this Act, with the effect provided by that section. If a person eligible for a refund of contributions elects to have all or a portion of the accumulated contributions paid directly to an eligible retirement plan and

specifies the eligible retirement plan to which the contributions are to be paid on a form approved for that purpose by the fund, the fund shall make the payment in the form of a direct trustee-to-trustee transfer but is under no obligation to determine whether the other plan in fact is an eligible retirement plan for that purpose.

ARTICLE 6. DISABILITY RETIREMENT BENEFITS

Sec. 6.01. **INITIAL ELIGIBILITY FOR DISABILITY RETIREMENT.** A firefighter is eligible to retire and receive a disability retirement annuity if:

(1) application for retirement is made by the member or the member's legal representative, or if the board of trustees determines that, although no application has been filed, retirement is for the good of the fire department;

(2) the medical board certifies that the member is unable to perform the duties of the member's occupation as a firefighter and sends the member's application to the board of trustees; and

(3) the board of trustees approves the disability retirement.

Sec. 6.02. **NO REQUIREMENT OF ON-THE-JOB INJURY.** To qualify for disability retirement, a person's disability does not have to be incurred in connection with the person's performance of duties as a firefighter and may be incurred while employed by some person or entity other than the fire department.

Sec. 6.03. **AMOUNT OF DISABILITY BENEFIT.** Subject to adjustment under Section 6.05 of this Act, the disability retirement benefit payable to a member is the normal service retirement benefit described by Section 5.04 of this Act, but not less than the member would have received after 20 years of service credit.

Sec. 6.04. **TERMINATION DURING FIRST 2-1/2 YEARS.** If, during the first 2-1/2 years of disability retirement, a retiree recovers to the extent that the person is able to perform the duties of the person's job as a firefighter, the board of trustees may terminate the retirement benefit and restore the person to active service at not less than the same rank the person held at the time of disability retirement.

Sec. 6.05. **CONTINUATION AFTER FIRST 2-1/2 YEARS.** After a retiree has received disability retirement benefits from the fund for at least 2-1/2 years, the board of trustees from time to time may review the situation of the person to determine the status of the disability. The board of trustees may ask the medical board for its opinion of the status of the disability. If the board of trustees determines that the person has recovered to the extent that the person is able to be employed, the board of trustees may:

(1) continue to pay the full disability retirement benefit;

(2) pay a reduced disability retirement benefit in an amount commensurate with the person's disability as determined by the board; or

(3) discontinue payment of a disability retirement.

Sec. 6.06. **APPLICATION; PHYSICIAN'S STATEMENT; MEDICAL BOARD ACTION.** (a) An application for disability retirement must be accompanied by a written statement, on a form approved by the board of trustees, signed by a physician of the member's choice. The member shall pay any costs of or fees for obtaining the physician's statement and shall file the application and statement with the fund. As soon as possible after the application is filed, the medical board shall evaluate the medical and other pertinent information concerning the member's application.

(b) The medical board may require any firefighter to obtain additional medical opinions before issuing a certificate that the member is unable, as a result of physical or mental disability, to perform the duties of the member's occupation as a firefighter. The fund shall pay any costs or fees of examination by a person other than the member's own physician.

(c) A certificate from the medical board may include a finding by that board that the disability is likely to be temporary or is likely to be total and permanent.

(d) The board of trustees at any time may require a person receiving a disability retirement benefit under this Act to appear and undergo a medical examination by a physician selected by the board of trustees or the medical board for that purpose. The result of the examination and report by the physician shall be considered by the board of trustees in determining whether the disability retirement benefit will be continued, increased, if less than the maximum provided by this Act, decreased, or discontinued.

Sec. 6.07. EVIDENCE OF INCOME OF DISABILITY RETIREE. The board of trustees may require a person receiving disability retirement benefits under this Act to provide evidence of annual income. The board of trustees may consider the evidence in any determination of ability to be employed. The board of trustees may reduce or discontinue disability retirement benefit payments to a person who fails or refuses to produce information which the board of trustees has required under this section.

Sec. 6.08. REINSTATEMENT; SERVICE RETIREMENT ELIGIBILITY. (a) The board of trustees may reinstate any disability retirement benefit that previously has been terminated or reduced if the disabled firefighter's condition has worsened as a result of the same cause for which the person was previously granted disability retirement.

(b) If a person's disability retirement benefit is reduced or discontinued and the person is or subsequently becomes eligible for service retirement under other provisions of this Act, the person is entitled to the service retirement benefit on meeting all requirements for that benefit, reduced by the amount of any disability retirement benefit that the person continues to receive from the fund.

Sec. 6.09. NO BENEFITS WHILE RECEIVING SALARY. A person may not receive disability retirement benefits for any period during which the person receives full salary or compensation from the fire department, including payments received while on sick leave.

ARTICLE 7. SURVIVOR'S BENEFITS

Sec. 7.01. SURVIVING SPOUSE OF FIREFIGHTER. If a firefighter dies before retirement, the firefighter's surviving spouse is entitled to receive an immediate monthly benefit from the fund of 75 percent of the service retirement benefit that the firefighter would have received if the firefighter had retired on the date of death, but not less than 75 percent of the monthly payment the decedent would have received based on 20 years of service credit.

Sec. 7.02. SURVIVING SPOUSE OF RETIREE. On the death of a retiree, the retiree's surviving spouse is entitled to receive an immediate monthly benefit from the fund of 75 percent of the retirement benefit that was being paid to the retiree if either:

- (1) the surviving spouse was married to the retiree at the time of the retiree's retirement; or
- (2) became married to the retiree after the retiree's retirement and remained married to the retiree at least 24 consecutive months prior to the retiree's death.

Sec. 7.03. SURVIVING SPOUSE OF FORMER FIREFIGHTER. (a) An immediate monthly benefit is payable to the surviving spouse of a former firefighter who:

(1) before termination of employment with the fire department had accumulated at least 10 years of service credit in the fund and had made required contributions to the fund for a period of at least 10 years; and

(2) did not withdraw the member's contributions from the fund at the time of or after the termination of employment.

(b) If the former firefighter died before attaining 50 years of age, the benefit is payable only if the spouse was married to the former firefighter on the date of the former firefighter's termination of employment with the fire department.

(c) If the former firefighter died after attaining 50 years of age, the benefit is payable only if the spouse was married to the former firefighter when the member attained 50 years of age.

(d) The amount of the benefit payable under this section is 75 percent of the retirement benefits the former firefighter either was receiving or was entitled to receive at age 50.

Sec. 7.04. TERMINATION OF SPOUSE'S BENEFITS. The benefit payable to a surviving spouse is payable throughout the surviving spouse's remaining lifetime. If, prior to September 1, 1997, the benefit payable to a surviving spouse has terminated due to the spouse's marriage to another person, the surviving spouse may again begin receiving benefits (but not retroactively) beginning on the date the surviving spouse files a written application with the board of trustees, requesting resumption of benefits.

Sec. 7.05. SURVIVING CHILDREN'S BENEFITS. (a) On the death of a member, if there is no surviving spouse, a benefit is payable to the decedent's surviving dependent children, if any. The total monthly benefit payable under this subsection is 75 percent of the monthly payment that the decedent would have received under the service retirement benefit described by Section 5.04 of this Act, but not less than 75 percent of the monthly payment the decedent would have received based on 20 years of service credit. If there is more than one dependent child of the decedent, each dependent child is entitled to receive an equal share of the total monthly payment under this section.

(b) On the death of a member under this Act, if there is a surviving spouse, a benefit is payable to each of the decedent's surviving dependent children, if any. The monthly amount of the benefit payable to each child is 15 percent of the monthly payment that the decedent would have received under the service retirement benefit described by Section 5.04 of this Act, but not less than 15 percent of the monthly payment the decedent would have received based on 20 years of service credit. If the decedent left more than five surviving dependent children, the monthly benefit payable to each dependent child shall be reduced so that the total monthly benefit payable under this subsection does not exceed the total monthly benefit that would have been payable if the decedent had left no surviving spouse.

(c) Payments by the fund to a dependent child under this section shall cease on the earliest of the date of the child's death, marriage, or attainment of age 22.

Sec. 7.06. PAYMENTS TO DEPENDENT PARENTS. If a deceased member leaves no surviving spouse, no surviving designated beneficiary, and no surviving children entitled to receive a benefit under this Act, but is survived by one or more dependent parents, the dependent parent, or one of the surviving parents designated by the board of trustees, is entitled to receive a monthly benefit payment equal to the monthly amount that would have been payable to a surviving spouse of the deceased. All payments under this section cease upon the death of the surviving dependent parent.

Sec. 7.07. INCREASE IN SURVIVOR'S BENEFITS. On the affirmative vote of a majority of the members of the board of trustees either or both of the following actions may be taken:

(1) benefits to dependent children may be increased to an amount not to exceed the amount recommended by the board's actuary; or

(2) benefits to surviving spouses may be increased to an amount not to exceed the maximum approved by the actuary.

Sec. 7.08. **PERSON CAUSING DEATH OF MEMBER OR BENEFICIARY.** (a) A benefit payable on the death of a member or beneficiary may not be paid to a person convicted of causing that death, but instead a benefit is payable as provided by Subsection (c) of this section to a person who would be entitled to the benefit had the convicted person predeceased the decedent. If no person would be entitled to the benefit, the benefit is payable to the decedent's estate.

(b) The fund is not required to pay a benefit under Subsection (a) of this section unless it receives actual notice of the conviction of the person who would have been entitled to the benefits. However, the fund may delay payment of a benefit payable on the death of a member pending the results of a criminal investigation and of legal proceedings relating to the cause of death.

(c) The benefit payable under Subsection (a) of this section is a refund of the member's accumulated contributions and interest, reduced by any annuity payments that may have been made as a result of the member's retirement.

(d) For the purposes of this section, a person has been convicted of causing the death of a member or beneficiary if the person:

(1) has pleaded guilty or nolo contendere to or has been found guilty by a court of an offense at the trial of which it is established that the person's intentional, knowing, or reckless act or omission resulted in the death of the person who was the member or beneficiary, regardless of whether sentence was imposed or probated; and

(2) has no appeal of the conviction pending and the time provided for appeal has expired.

Sec. 7.09. **SURVIVING BENEFICIARY OF CERTAIN UNMARRIED MEMBERS.** (a) On the death of a member who has retired or who is eligible for retirement but has not yet retired, a benefit is payable under this section if the member has designated (on a form filed with the fund) a beneficiary to receive the benefit payable under this section, but only if no benefit is payable to a surviving spouse or a child of that member under other provisions of this article.

(b) The benefit payable under this section is an immediate monthly benefit from the fund of 75 percent of:

(1) the retirement benefit that was being paid to the member if the member has retired; or

(2) the retirement benefit that the member would have received if the member had retired on the date of death, if the member did not retire prior to that date.

(c) If the beneficiary was, at the time of the member's death, more than 10 years younger than the member, the benefit payable under Subsection (b) shall be reduced to the actuarial equivalent of the benefit that would have been payable if the member and the beneficiary had been the same age.

ARTICLE 8. DEFERRED RETIREMENT OPTION PLAN

Sec. 8.01. **MEMBER REMAINING IN ACTIVE SERVICE.** In lieu of either leaving active service and beginning to receive a service retirement annuity under Section 5.01 of this Act or remaining in active service and continuing to accrue additional service credit under Section 5.02 of this Act, a member who is eligible to receive a normal service retirement benefit under Section 5.01 of this Act may remain in active service, become a participant in the deferred retirement option plan ("DROP") in accordance with Sections 8.02 and 8.03 of this Act, and defer the beginning of the person's retirement annuity. Once an election to participate in the DROP has been made, the election continues in effect as long as

the member remains in active service as a firefighter. When the member leaves active service, the member may apply for a service retirement annuity under Section 5.01 of this Act.

Sec. 8.02. ELECTION TO PARTICIPATE IN DROP. The election to participate in the DROP shall be made in accordance with procedures adopted by the board of trustees. The election may be made at any time on or after the date the member becomes eligible for normal service retirement under Section 5.01 of this Act or early retirement under Section 5.05 of this Act and becomes effective on the first day of the first month after the date of the election. At the same time that a member makes an election to participate in the DROP, the member must agree in writing to terminate service with the fire department on a date not later than the seventh anniversary of the effective date of the election under this section. An agreement to terminate service is binding on the member and the fire department, except that the member may terminate active service at any time before the date selected. An election to participate in the DROP has no effect on either the municipality's or the member's contributions under Section 10.01 of this Act.

Sec. 8.03. CREDITS TO MEMBER'S DROP ACCOUNT. Each month after a member makes an election to participate in the DROP and until the member's retirement, the board of trustees shall cause an amount equal to the retirement annuity that the member would have received under Section 5.04 of this Act for that month if the member had left active service and been granted a retirement annuity on the effective date of the election under Section 8.02 of this Act to be credited to a separate DROP account maintained within the fund for the benefit of the member. The member's contributions under Section 10.01(d) of this Act made after the effective date of the election to participate in the DROP shall also be credited to the member's DROP account. Amounts held in a member's DROP account shall be credited at the end of each calendar month with interest at a rate equal to one-twelfth of five percent until the member's retirement.

Sec. 8.04. AMOUNT OF CREDITS TO MEMBER'S DROP ACCOUNT. The amount credited monthly to the member's DROP account:

(1) shall be increased as a result of any increase in the formula used in computing service retirement benefits under Section 5.04 of this Act that occurs after the effective date of the member's election to participate in the DROP but before the effective date of the member's retirement;

(2) shall be increased by any annual cost-of-living adjustments under Section 9.04 of this Act that occur between the effective date of the member's election to participate in the DROP and the effective date of the member's retirement, but only as to amounts credited to the member's DROP account after a cost-of-living adjustment; and

(3) is subject to the limitations prescribed by Section 9.03 of this Act.

Sec. 8.05. DISTRIBUTIONS FROM MEMBER'S DROP ACCOUNT. (a) On leaving active service as a firefighter and beginning to receive a retirement annuity, a member who participates in the DROP shall begin to receive the amount credited to the person's DROP account under either of the following methods of distribution selected by the member:

(1) a single-payment distribution made at a time selected by the member but not later than April 1 of the year after the member attains 70-1/2 years of age; or

(2) in not more than four payments, which may be equal or unequal as the member may determine, all of which must occur not later than April 1 of the year after the member attains 70-1/2 years of age.

(b) The DROP account balance of a member shall be credited at the end of each calendar month with interest at a rate equal to one-twelfth of five percent.

(c) A member may not receive a distribution from the member's DROP account before termination of active service as a firefighter. A member shall notify the fund in writing, on a form that the board of trustees may prescribe, at least 30 days before each distribution made under this section.

Sec. 8.06. **ESTABLISHMENT OF DROP ACCOUNT AT RETIREMENT.**

(a) In lieu of electing to participate in the DROP before actual retirement, a member who is eligible for normal service retirement or early retirement and who terminates or has terminated active service as a firefighter may establish a DROP account under this section.

(b) A member who already has terminated covered employment and who subsequently becomes eligible to receive a normal service retirement benefit under Section 5.06 is also entitled to establish a DROP account under this section upon retiring under Section 5.06

(c) If a member elects to participate in the DROP pursuant to this section:

(1) the board of trustees shall cause to be credited to a DROP account maintained within the fund for the benefit of that person an amount equal to the credits that the member's DROP account would have received, including interest, if the member had established the DROP account after becoming eligible for service retirement, but not more than seven years before the effective date of the person's retirement;

(2) the date used in computations under Subdivision (1) of this section as if the member had established the DROP account on that date is the effective date of the member's election to participate in the DROP;

(3) the member will receive payments from the member's DROP account as the member may select under Section 8.05 of this Act; and

(4) the member's DROP account shall be credited with interest as provided by Section 8.05 of this Act.

(d) If a member who did not establish a DROP account under this section but was eligible to do so dies before retirement, the surviving spouse, if any, of that member may elect to participate in the DROP if the surviving spouse has not received any benefit payments under Section 7.01 of this Act. If a surviving spouse makes an election under this subsection:

(1) the board of trustees shall cause to be paid to the surviving spouse in a lump sum, as soon as administratively possible after the fund receives notice of the election, an amount equal to the credits that the member's DROP account would have received, including interest, if the member had established the DROP account after becoming eligible for service retirement, but not more than seven years before the date of the member's death; and

(2) the amount of the benefit payable to the surviving spouse under Section 7.03 of this Act is 75 percent of the benefit the member would have been eligible to receive if the member had established the DROP account on becoming eligible for service retirement, but not more than seven years before the date of the member's death.

(e) if a member who did not establish a DROP account under this section but was eligible to do so dies before retirement without leaving a surviving spouse, the surviving dependent children, if any, may elect to participate in the DROP if the dependent children have not received any benefit payments under Section 7.05 of this Act. An election under this subsection must be made by all of the surviving dependent children of the member, except that the guardian of any child who is younger than 18 years of age at the time of the election makes a binding election for the child. If the surviving dependent children make an election under this subsection:

(1) the board of trustees shall cause to be paid jointly to the dependent children in a lump sum, as soon as administratively possible after the fund receives notice of the election, an amount equal to the credits the member's DROP account would have received, including interest, if the member had established the DROP account after becoming eligible for service retirement, but not less than the credits the DROP account would have received, including interest, based on 20 years of service credit; and

(2) the amount of the benefit payable to the dependent children under Section 7.05(a) is 75 percent of the benefit the member would have been entitled to receive if the member had established the DROP account on becoming eligible for service retirement, but based on not less than 20 years of service credit.

Sec. 8.07. PAYMENTS FROM DROP ACCOUNT AT MEMBER'S DEATH. (a) The provisions of Article 7 relating to death benefits of qualified survivors do not apply to amounts credited to a member's DROP account. Instead, a member who participates in the DROP may designate a beneficiary to receive any balance in the member's DROP account at the member's death. The beneficiary designation must be made on a form prescribed by the board of trustees and filed with the fund before the member's death. If the member is married at the time of the designation, designation of a beneficiary other than the member's spouse is valid only if the spouse consents to the designation in writing on the same form that is used to designate the beneficiary. Distributions from a member's DROP account after the death of the member shall be made as provided by this section.

(b) If a member who participates in the DROP dies while in active service or if the member has not filed an election with the board of trustees as described by Subsection (c) of this section, distributions to the designated beneficiary will begin not more than one year after the date of the member's death and shall be made either as a single-payment distribution of the member's DROP account balance or in not more than four equal annual installments over a period of not more than 37 months.

(c) If a member who participates in the DROP dies after terminating active service and has filed an election with the board of trustees to be paid in not more than four equal annual installments over a period of not more than 37 months, the balance of the member's DROP account shall be distributed to the designated beneficiary in the manner that the member selected.

(d) If the member has not designated a beneficiary to receive distribution from the member's DROP account or if the person so designated does not survive the member by at least 72 hours, the member's DROP account shall be distributed in a single-sum payment as soon as administratively possible after the member's death to any surviving spouse who survives the member by at least 72 hours, if any, or to the member's estate if there is no surviving spouse.

Sec. 8.08. SUBSEQUENT DISABILITY OF DROP PARTICIPANT. A member who participates in the DROP becomes ineligible for any disability benefits described by Article 6 of this Act. Instead, if the board of trustees determines that the member would have been eligible for disability retirement, the board of trustees shall grant a normal service retirement annuity as described by Section 5.04 of this Act and shall pay the member both the service retirement annuity and a distribution of the DROP account as described by Section 8.05 of this Act.

Sec. 8.09. RETIREMENT BENEFIT PAYABLE TO DROP PARTICIPANT. The retirement benefit payable under Article 5 or 6 of this Act to a person who participates in the DROP:

(1) may not be increased as a result of any increase in the formula used in computing service retirement benefits under Section 5.04 of this Act that occurs after the effective date of the member's election to participate in the DROP;

(2) may not be increased as a result of any increase in the member's compensation that occurs after the effective date of the member's election to participate in the DROP;

(3) shall be increased by any annual cost-of-living adjustments under Section 9.04 of this Act that occur between the effective date of the member's election to participate in the DROP and the effective date of the member's retirement.

(4) may not be increased for additional service credit after the effective date of the member's election to participate in the DROP; and

(5) is subject to the limitations prescribed by Section 9.03 of this Act.

Sec. 8.10. **TERMINATION OR MODIFICATION OF DROP BY FUND.** If the board's actuary, not sooner than January 1, 2000, certifies to the board that DROP participation is resulting in a significant actuarial loss to the fund, the board of trustees may:

(1) reduce the interest paid on DROP accounts, or take other action that would reduce the future credits to DROP accounts, but only for all DROP accounts that are established after the effective date of the action by the board of trustees; or

(2) terminate the deferred retirement option plan for all members who have not at that time established a DROP account.

ARTICLE 9. MISCELLANEOUS PROVISIONS REGARDING BENEFITS

Sec. 9.01. **TIME FOR PAYMENT TO RETIRED MEMBERS.** Benefits to a person who retires under this Act are payable on the first day of each month beginning with the month following the month in which the person retires.

Sec. 9.02. **TIME FOR PAYMENT TO SURVIVORS; PAYMENT TO ESTATE.** Benefits to a surviving spouse, dependent child, or dependent parent under this Act are payable on the first day of each month beginning with the month following the month in which the death of the member or former firefighter occurs. After all payments cease, any amount by which the member's or former firefighter's total accumulated contributions at the date of that person's death exceed the amount of all retirement and death benefits paid by the fund as a result of the person's participation in the fund is payable to the estate of the member or former firefighter.

Sec. 9.03. **LIMITATIONS ON PAYMENT OF BENEFITS.** (a) If the amount of any benefit payment under this Act would exceed the limitations provided by Section 415 of the Internal Revenue Code of 1986 (26 U.S.C. Section 415) and the regulations adopted under that section, the board of trustees shall reduce the amount of the benefit as required to comply with that section.

(b) A person's vested accrued benefit in effect on September 1, 1995, may not be reduced under this section.

Sec. 9.04. **COST-OF-LIVING ADJUSTMENT.** (a) Subject to the provisions of Section 5.05 of this Act a person receiving a retirement or survivor's benefit under this Act is entitled to an annual cost-of-living adjustment of that person's benefit based on any increase in the Consumer Price Index for All Urban Consumers as determined by the United States Department of Labor since the last increase in benefits under this section.

(b) If an adjustment under Subsection (a) of this section would exceed one percent of a person's benefit, the portion of the adjustment that is in excess of one percent of the benefit may not be made under this section unless the board's actuary has advised the board of trustees that the adjustment would not impair the financial stability of the fund and the adjustment has been approved by the affirmative vote of a majority of the board of trustees. If an adjustment under Subsection (a) of this section would be one percent or less of a person's benefit, the adjustment may not be made under this section unless the board's actuary has advised the board of trustees that the adjustment would not impair the financial stability of the fund.

(c) The amount of an adjustment under this section shall be determined by the board of trustees. An adjustment of a benefit under this section may not reduce any person's benefit to an amount less than the person received when the benefit first was paid to that person.

(d) If the board's actuary has advised the board of trustees that the adjustment authorized by this subsection would not impair the financial stability of the fund, the adjusted retirement and/or survivor's benefits payable under this Act may be increased by an amount or amounts determined by the affirmative vote of a majority of the board of trustees.

Sec. 9.05. **NO INTEGRATION WITH SOCIAL SECURITY.** A benefit payable under this Act may not be integrated with benefits payable under the Social Security Act, as amended (42 U.S.C. Section 301 et seq.), and benefits payable under the Social Security Act may not be taken into account when determining the amount of benefits to which a person is entitled under this Act.

Sec. 9.06. **WITHDRAWAL OF CONTRIBUTIONS.** (a) A living person who has terminated all employment with the fire department and who has not retired may withdraw, on application, all of the accumulated contributions credited to that person's individual account with the fund in excess of the amount of benefits that the person previously has received from the fund. On withdrawal, the person's account will be closed and all service credit the person has accumulated will be canceled.

(b) If a member dies before retirement and no person is entitled to a survivor's benefit under this Act, the person's estate may, after application, withdraw all of the accumulated contributions credited to that person's individual account with the fund in excess of the amount of benefits that the person previously has received from the fund.

Sec. 9.07. **ESCHEAT OF CONTRIBUTIONS.** If an application for withdrawal of contributions under Section 9.06 of this Act from or on behalf of a person who has ceased to be an employee of the fire department or the person's estate has not been received by the fund before the seventh anniversary of the termination of the person's employment with the fire department for a reason other than retirement, the person's accumulated contributions shall escheat to the fund. If the person or the person's estate later applies for the contributions, the fund shall refund the contributions regardless of the earlier escheatment.

Sec. 9.08. **INSUFFICIENT FUNDS; PRORATED REDUCTION IN BENEFITS.** If for any reason the funds available for any purpose covered by this Act become insufficient to pay in full any benefit payable under this Act, all benefits being paid by the fund shall be reduced pro rata for the time the efficiency exists.

Sec. 9.09. **REDUCTION IN BENEFIT PAYMENTS ON REQUEST.** If a person receiving a benefit from the fund requests in writing that the amount of the benefit be reduced to a specified monthly amount, the fund will pay the lesser amount specified in the request. If the person subsequently requests in writing that the benefit be increased to any specified amount that does not exceed the amount originally payable, the fund will pay the increased amount specified. If a person receiving a benefit from the fund requests in writing that payment of the benefit be discontinued, the fund shall discontinue payment of the benefit. If the person subsequently requests that payment of the benefit be resumed, the fund shall resume payment of the benefit. Any amounts not paid by the fund pursuant to a request under this section are forfeited to the fund and are not recoverable by any person.

Sec. 9.10. **OPTIONAL RETIREMENT ANNUITY.** (a) An optional retirement annuity is an annuity that is certified by the board's actuary to be the actuarial equivalent of the annuity provided under Section 5.04 of this Act and the survivor's benefits provided under Article 7 of this Act. An optional retirement annuity is payable throughout the life of the retiree.

(b) Instead of the annuity payable under Section 5.04 of this Act, a member who retires may elect to receive an optional retirement annuity approved by the board of trustees under this section.

(c) The survivor's benefits provided under Article 7 of this Act are not payable on the death of a retiree who elects an optional retirement annuity under this section.

(d) The board of trustees by rule may provide that:

- (1) an optional retirement annuity is payable after a member's death throughout the life of a person designated by the member; or
- (2) if a retiree dies before a fixed number of monthly annuity payments are made, the remaining number of payments are payable to the retiree's designated

- beneficiary or, if a designated beneficiary does not exist, to the retiree's estate.
- (e) To elect an optional retirement annuity, a member must make the election and designate a beneficiary on a form prescribed by the board of trustees. The member must file the form with the board on or before the effective date of the member's retirement.
 - (f) Except as provided by Subsections (g), (h), and (i) of this section, if a member elects an optional retirement annuity that, on the member's death, pays to the member's spouse an amount that is less than 75 percent of the annuity that is payable during the joint lives of the member and the member's spouse, the spouse must consent to the election. The spouse's consent must be in writing and witnessed by an officer or employee of the fund or acknowledged by a notary public.
 - (g) If a member's spouse has been adjudicated incompetent, the consent required under subsection (f) of this section may be given by the spouse's guardian.
 - (h) If a physician determines that a member's spouse is not mentally capable of managing the spouse's affairs, the consent required under Subsection (f) of this section may be given by the member if the member would be qualified to serve as a guardian of the spouse and the board of trustees determines that a guardianship of the estate is not necessary.
 - (i) Spousal consent under Subsection (f) of this section is not required if the board of trustees determines that:
 - (1) a spouse does not exist;
 - (2) the spouse cannot be located;
 - (3) the first anniversary of the marriage will not occur before the date the annuity first becomes payable; or
 - (4) a former spouse is entitled to receive a portion of the member's optional retirement benefit under a qualified domestic relations order.

ARTICLE 10. COLLECTION OF CONTRIBUTIONS; INTEREST

Sec. 10.01. **MUNICIPAL AND MEMBER CONTRIBUTIONS.** (a) Each municipality in which a fire department to which this Act applies is located shall appropriate and contribute to the fund an amount equal to 18.05 percent of the compensation of all members during that month.

(b) Each firefighter shall pay into the fund each month 13.70 percent of the firefighter's compensation for that month.

(c) The governing body of each municipality may authorize the municipality to contribute a portion of the contribution required of each firefighter under this section. In that event:

(1) the municipality shall appropriate and contribute to the fund each month at the higher percentage of compensation necessary to make all contributions required and authorized to be made by the municipality under this section; and

(2) each firefighter's individual account with the fund shall be credited each month as if the firefighter had made the entire contribution required of that firefighter under Subsection 10.01(b).

(d) The governing body of each municipality may authorize the municipality to make an additional contribution to the fund in whatever amount the governing body may determine. The members of the fund, by a majority vote in favor of an increase in contributions above 13.70 percent, may increase

each firefighter's contribution above 13.70 percent to any percentage recommended by a majority vote of the board of trustees.

Sec. 10.02. **PICKUP OF FIREFIGHTER CONTRIBUTIONS.** A municipality to which this Act applies shall pick up the firefighter contributions to the fund that are required or authorized pursuant to Section 10.01 of this Act, whichever is higher. Firefighter contributions will be picked up by a reduction in the monetary compensation of the firefighters. Contributions picked up shall be treated as employer contributions in accordance with Section 414(h)(2) of the Internal Revenue Code for the purpose of determining tax treatment of the amounts under that code. These contributions will be deposited to the credit of the individual accounts of the firefighters in the fund and shall be treated as the monthly contributions of the firefighters for all purposes of this Act. These contributions are not includable in the gross income of a firefighter until the time that they are distributed or made available to the firefighter or survivors of the firefighter. The board of trustees may at any time, by majority vote, discontinue the pickup of firefighter contributions by the municipality.

Sec. 10.03. **CONTRIBUTIONS AND INCOME AS ASSETS OF FUND.** All contributions paid to the fund under Sections 10.01 and 10.02 of this Act become a part of the assets of the fund. All interest and dividends on investments of the assets of the fund shall be deposited into the fund and are part of it.

Sec. 10.04. **INTEREST ON INDIVIDUAL ACCOUNTS.** The fund shall credit interest on December 31 of each year to the account of each firefighter, and of each former firefighter, who has not retired in an amount equal to five percent of the accumulated contributions, including previously credited interest, on deposit on January 1 of that year. The fund may not pay interest on a firefighter's or former firefighter's contributions for part of a year or for any period that is more than five calendar years after the date of termination of employment.

ARTICLE 11. INVESTMENT OF ASSETS

Sec. 11.01. **PERMITTED INVESTMENTS.** When the board of trustees determines that there is in the fund a surplus exceeding the reasonable, safe amount necessary to take care of the current demands on the fund, the surplus, or so much of it as the board of trustees considers prudent, may be invested in:

- (1) direct obligations of or obligations the principal and interest of which are guaranteed by the United States or its agencies or instrumentalities;
- (2) short-term investments funds, mutual funds, or their equivalent that are rated as investment quality or higher by a nationally recognized investment rating firm;
- (3) fully collateralized or direct repurchase agreements, including direct and reverse security repurchase agreements and security lending agreements that:
 - (a) have a defined termination date;
 - (b) are secured by obligations described by this section or by cash; and
 - (c) are pledged with a third party selected or approved by a majority vote of the board of trustees;
- (4) corporate bonds, including convertible bonds collateralized mortgage obligations, and asset-backed securities;
- (5) common stocks preferred stocks and convertible preferred stocks of companies incorporated in the United States and foreign stocks that are designated in United States dollars and that are registered with the Securities and Exchange Commission and listed on a United States exchange or by the National Association of Securities Dealers Automated Quotations;
- (6) foreign equity and fixed income investments; and

(7) mutual funds, common funds, and their equivalents, that contain only items described above as being authorized investments.

Sec. 11.02. **REDUCTION IN RATING.** An investment in corporate bonds that meets the requirements of Section 11.01(5) of this Act at the time of purchase is not required to be sold because the bonds' rating is subsequently reduced to a rating that is not more than one major classification lower than the requirements.

{Section 11.02 repealed by Acts, 1997}

Sec. 11.03. **LIMITATIONS ON INVESTMENTS.** The fund may not own more than five percent of the voting stock of any one corporation. Under an investment measure at market:

(1) total fixed-income investments should not represent less than 30 percent of the value of the investment portfolio;

(2) total investments in common stocks should not represent more than 70 percent of the value of the investment portfolio;

(3) total investments in common stocks and bonds of foreign corporations may not represent more than 20 percent of the value of the investment portfolio; and

(4) total investments in any one corporation may not represent more than five percent of the value of the investment portfolio.

Sec. 11.04. **FIDUCIARIES.** (a) A person or financial institution is a fiduciary of the fund to the extent that the person or the financial institution:

(1) exercises any discretionary authority or discretionary control over management of the fund or exercises any authority or control over management or disposition of the assets of the fund;

(2) renders or has authority or responsibility to render investment advice for a fee or other compensation, direct or indirect, concerning any money or other property of the fund; or

(3) has any discretionary authority or discretionary responsibility over the administration of the fund.

(b) A fiduciary of the fund may not cause the fund to engage in a transaction if the fiduciary knows or should know that the transaction constitutes a direct or indirect:

(1) sale, exchange, or lease of any property from the fund to a party for less than adequate consideration or from a party to the fund for more than adequate consideration;

(2) loan of money or other extension of credit from the fund to a party without the receipt of adequate security and a reasonable rate of interest or from a party to the fund with provision of excessive security or an unreasonably high rate of interest;

(3) furnishing of goods, services, or facilities from the fund to a party for less than adequate consideration or from a party to the fund for more than adequate consideration;

(4) transfer to or use by or for the benefit of a party of any assets of the fund for less than adequate consideration.

(c) A fiduciary of the fund may not:

(1) deal with the assets of the fund in the fiduciary's own interest or for the fiduciary's own account;

- (2) in the fiduciary's individual or any other capacity act in any transaction involving the fund on behalf of a party whose interests are adverse to the interests of the fund or the interests of its participants or beneficiaries; or
- (3) receive any consideration for the fiduciary's own personal account from any party dealing with the fund in connection with a transaction involving the assets of the fund.
- (d) The board of trustees may purchase insurance indemnifying the members of the board of trustees against personal loss or accountability from liability resulting from a member's act or omission as a member of the board of trustees.

ARTICLE 12. OFFICERS, EMPLOYEES, AND PROFESSIONALS

Sec. 12.01. **ADMINISTRATOR AND EMPLOYEES.** The board of trustees shall appoint an administrator who shall administer the fund under the supervision and direction of the board of trustees. The board of trustees shall employ such other employees as are required for the efficient administration of the fund.

Sec. 12.02. **LEGAL COUNSEL.** The board of trustees shall retain legal counsel for matters affecting the operation of the fund.

Sec. 12.03. **ACTUARY.** (a) The board of trustees shall employ an actuary who may be the consultant and technical advisor to the board of trustees regarding the operation of the fund and may perform such duties as may be required by the board.

(b) The actuary shall make a valuation at least once every two years of the assets and liabilities of the fund on the basis of assumptions and methods that are reasonable in the aggregate, considering the experience of the fund and reasonable expectations and that, in combination, offer the actuary's best estimate of anticipated experience under the fund.

(c) On the basis of the valuation, the actuary shall make recommendations to the board of trustees to ensure the actuarial soundness of the fund. In making recommendations, the actuary shall define each actuarial term and enumerate and explain each actuarial assumption used in making the valuation. This information must be included either in the actuarial study or in a separate report made available as a public record.

(d) The board of trustees shall file with the State Pension Review Board a copy of each actuarial study and each separate report made as required by law.

(e) An actuary employed under this section must be a fellow of the Society of Actuaries, a member of the American Academy of Actuaries, or an enrolled actuary under the federal Employee

Retirement Income Security Act of 1974 (29 U.S.C. Section 1001 et seq.).

(f) The municipality may pay all or part of the cost of the actuarial services. Any cost not paid directly by the municipality is payable from assets of the fund.

Sec. 12.04. **INVESTMENT COUNSELORS AND MANAGERS; CUSTODIAN OF ASSETS.** (a) The board of trustees may employ professional investment counselors to advise and assist the board in the investment of the assets of the fund. The investment counseling service must be provided by a nationally known organization whose business functions include rendering continuous investment advisory service to public pension and retirement funds. The municipality may pay the entire cost of this counseling service. If not paid by the municipality, the cost may be paid from the assets of the fund.

(b) The board of trustees shall appoint investment managers for the fund by contracting for professional investment services with one or more organizations, which may include a bank if it has a trust department, that are in the business of managing investments.

(c) To be eligible for appointment under Subsection (b) of this section, an investment manager must be:

- (1) registered under the federal Investment Advisors Act of 1940 (15 U.S.C. 801b-1 et seq.);
- (2) a bank as defined by that Act; or
- (3) an insurance company qualified to perform investment services under the laws of more than one state.

(d) In a contract made under Subsection (b) of this section, the board shall specify any policies, requirements, or restrictions, including criteria for determining the quality of investments and for the use of standard rating services, that the board adopts for investments of the fund.

(e) The municipality may pay all or part of the cost of professional investment management services under a contract under Subsection (b) of this section. Any cost not paid directly by the municipality is payable from assets of the fund.

(f) The board of trustees may at any time and shall at frequent intervals monitor the investments made by any investment manager for the fund. The board may contract for professional evaluation services to fulfill this requirement.

(g) The municipality may pay all or part of the cost of professional evaluation services under Subsection (f) of this section. Any cost not paid directly by the municipality is payable from the assets of the fund.

(h) The board may enter into an investment custody account agreement designating a state or national bank or a trust company as custodian for all assets allocated to or generated under the investment management contract.

(i) Under the custody account agreement, the board of trustees shall require the designated custodian to perform the duties and assume the responsibilities for assets under the contract for which the agreement is established.

(j) The municipality may pay all or part of the cost of services under a custody account agreement under Subsection (h) of this section. Any cost not paid directly by the municipality is payable from assets of the fund.

(k) An investment manager other than a bank having a contract with the fund under Subsection (b) of this section may not be a custodian of any assets of the fund.

(l) When demands of the fund require, the board shall withdraw from a custodian of fund assets money for use in paying benefits to members and other beneficiaries of the fund and for reasonable expenses of administering the fund, as approved by the board.

Sec. 12.05. **MEDICAL BOARD.** The board of trustees may designate a medical board composed of three persons. To be eligible to serve as a member of the medical board, a physician must be licensed to practice medicine in this state and be of good standing in the medical profession. The board of trustees also may designate persons who are not physicians to serve on the medical board. The medical board shall:

- (1) review all medical examinations and reports required by this Act;
- (2) investigate essential statements and certificates made by or on behalf of a member of the fund in connection with an application for disability retirement, and
- (3) report in writing to the board of trustees its conclusions and recommendations on all matters referred to it.

Sec. 12.06. **RETIREMENT COUNSELING.** The board of trustees may pay for the cost of counseling for members of the fund regarding retirement matters.

Sec. 12.07. **AUDITS; EMPLOYMENT OF CERTIFIED PUBLIC ACCOUNTANTS.** The board of trustees shall employ a certified public accountant or firm of certified public accountants to perform an audit of the fund at least annually. The municipality may pay the entire cost of an audit. If not paid by the municipality, the cost may be paid from the assets of the fund.

Sec. 12.08. **CIVIL ACTIONS FOR MONEY WRONGFULLY PAID OUT OR OBTAINED.** The board of trustees may recover by civil action from any offending party or from the party's sureties, if any, any money paid out or obtained from the fund through fraud, misrepresentation, defalcation, theft, embezzlement, or misapplication and may institute, conduct, and maintain the action in the name of the board of trustees for the use and benefit of the fund.